

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman  
SANDRA D. KENNEDY  
JUSTIN OLSON  
ANNA TOVAR  
JIM O'CONNOR

In the matter of:	)	DOCKET NO. S-21154A-21-0126
MSM Financial LLC (CRD No. 284781), an	)	<b>NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER OF REVOCATION AND ORDER FOR ADMINISTRATIVE PENALTIES</b>
Arizona limited liability company, and	)	
Michael Sean Murphy (CRD No. 1315103), a	)	
single man,	)	
Respondents.	)	

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**  
**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that respondents MSM Financial LLC and Michael Sean Murphy have engaged in acts, practices, and transactions that constitute violations of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* (“IM Act”).

**I.**  
**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the IM Act.

**II.**  
**RESPONDENTS**

2. MSM Financial LLC (“MSM Financial”) is a company organized under the laws of the state of Arizona on February 19, 2014. Michael Sean Murphy has been MSM Financial’s sole member

1 since it was organized. MSM Financial has been licensed by the Commission as an investment advisor  
2 since January 1, 2017. MSM Financial's CRD number is 284781.

3 3. Michael Sean Murphy ("Murphy") has been an Arizona resident since at least January  
4 1, 2017. On information and belief, Murphy has been a single man since at least January 1, 2017.  
5 Murphy has been licensed by the Commission as the sole investment advisor representative of MSM  
6 Financial since January 1, 2017. Murphy's CRD number is 1315103. Murphy has also been MSM  
7 Financial's chief compliance officer since it was licensed.

### 8 III.

### 9 FACTS

10 4. MSM Financial and Murphy (collectively, "Respondents") have failed to produce  
11 required information to the Division about their investment advisory services after a year and a half  
12 of the Division's efforts to obtain that information.

13 5. On November 14, 2019, the Division conducted an on-site examination of MSM  
14 Financial's virtual office location in Phoenix, Arizona ("On-Site Examination").

15 6. On December 19, 2019, the Division mailed a letter to Murphy as the owner of  
16 MSM Financial ("December 2019 Letter") to MSM Financial's principal office location. The  
17 December 2019 Letter noted that the On-Site Examination disclosed several deficiencies in MSM  
18 Financial's practices and procedures. The December 2019 Letter asked MSM Financial and  
19 Murphy to provide, within 21 days, either copies of a signed written advisory agreement for each of  
20 their clients or a notarized written narrative regarding their use and execution of each client's  
21 advisory agreement. Neither MSM Financial nor Murphy ever responded to the December 2019  
22 Letter.

23 7. On March 24, 2020, the Division emailed a copy of the December 2019 Letter to the  
24 email address Murphy uses in his capacity as MSM Financial's chief compliance officer. All  
25 subsequent emails to Murphy have been sent to the same address. MSM Financial and Murphy  
26 failed to respond to this email.

1           8.       On March 26, 2020, the Division emailed Murphy and asked him to confirm receipt  
2 of the December 2019 Letter. MSM Financial and Murphy failed to respond to this email.

3           9.       On April 30, 2020, the Division left a voicemail message for Murphy asking him to  
4 keep the Division informed of the status of the deficiencies.

5           10.      On May 4, 2020, the Division reached Murphy by telephone and discussed with him  
6 how to satisfy the deficiencies identified in the December 2019 Letter.

7           11.      On August 12, 2020, the Division emailed Murphy a letter ("August 2020 Letter")  
8 detailing the current status of the deficiencies in MSM Financial's practices and procedures.  
9 Among other issues, the August 2020 Letter again asked MSM Financial and Murphy to provide,  
10 within 21 days, a signed written advisory agreement for each of their clients or a notarized written  
11 narrative regarding their use and execution of each client's advisory agreement. MSM Financial  
12 and Murphy failed to respond to the August 2020 Letter.

13          12.      On September 30, 2020, the Division left a voicemail message for Murphy asking  
14 him to contact the Division about the August 2020 Letter. MSM Financial and Murphy failed to  
15 respond to this voicemail.

16          13.      On October 8, 2020, the Division left a voicemail message for Murphy asking him  
17 to contact the Division about the August 2020 Letter.

18          14.      On October 9, 2020, Murphy called the Division, and a Division employee spoke to  
19 Murphy by telephone for an hour explaining all of the examination deficiencies described in the  
20 August 2020 Letter.

21          15.      On October 13, 2020, the Division sent an email to Murphy and left a voicemail for  
22 him, both regarding the August 2020 Letter. MSM Financial and Murphy failed to respond to this  
23 email and this voicemail.

24          16.      On October 15, 2020, the Division sent an email to Murphy and left a voicemail for  
25 him, both regarding the August 2020 Letter. Murphy responded to this email and promised to call  
26 the Division on October 19, 2020, but he failed to do so.

1           17.     On October 27, 2020, Murphy contacted the Division and said he had corrected  
2 some of the deficiencies identified in the August 2020 letter, but he did not provide written  
3 advisory agreements or an affidavit about the agreements.

4           18.     On November 16, 2020, the Division sent an email to Murphy and left a voicemail  
5 for him, both regarding the August 2020 Letter. MSM Financial and Murphy failed to respond to  
6 this email and this voicemail.

7           19.     On November 19, 2020, the Division emailed Murphy a letter (“November 2020  
8 Letter”) detailing the current status of the deficiencies in MSM Financial’s practices and  
9 procedures. The November 2020 Letter again asked MSM Financial and Murphy to provide, within  
10 21 days, a signed written advisory agreement for each of their clients or a notarized written  
11 narrative regarding their use and execution of each client’s advisory agreement. MSM Financial  
12 and Murphy failed to respond to the November 2020 Letter.

13           20.     The November 2020 Letter also noted that at least two elements of MSM Financial’s  
14 Form ADV disclosure filings were incomplete, inaccurate, or misleading and needed to be  
15 corrected by amendment. MSM Financial has failed to correct those two elements of its Form ADV  
16 disclosure filings.

17           21.     On December 14, 2020, the Division sent an email to Murphy and left a voicemail  
18 for him, both regarding the November 2020 Letter. MSM Financial and Murphy failed to respond  
19 to this email and this voicemail.

20           22.     On January 21, 2021, the Division sent an email to Murphy regarding the November  
21 2020 Letter. MSM Financial and Murphy failed to respond to this email and this voicemail.

22           23.     On March 17, 2021, the Division mailed and emailed a letter to Murphy (“March  
23 2021 Letter”) requesting that he appear before a Division attorney pursuant to A.R.S. § 44-3133 to  
24 provide testimony on examination deficiencies and related issues on April 20, 2021. The March  
25 2021 Letter stated that in lieu of Murphy’s appearance, he could resolve all outstanding  
26 deficiencies by April 15, 2021.

24. On March 25, 2021, Murphy sent an email to the Division in response to the March 2021 Letter stating only, "Sorry for the delay, I have covid, working on the situation." Murphy has not made any other communications to the Division since this email on March 25, 2021.

25. On April 8, 2021, the Commission issued an investigative subpoena pursuant to A.R.S. § 44-3133 ("Subpoena") that required Murphy to appear before a Division attorney to provide testimony on examination deficiencies and related issues on April 22, 2021.

26. On April 8, 2021, the Division served the Subpoena on Murphy by Certified Mail, and the Subpoena was delivered to a person at Murphy's residence on April 12, 2021.

27. On April 19, 2021, the Division sent an email to Murphy with an electronic calendar invitation for his scheduled April 22, 2021, testimony and a link to join an online videoconferencing meeting for that testimony.

28. On April 22, 2021, Murphy failed to appear for his scheduled testimony as required by the Subpoena.

29. MSM Financial and Murphy have failed to produce a signed written advisory agreement for each of their clients or a notarized written narrative regarding their use and execution of each client's advisory agreement, as the Division has repeatedly requested for a year and a half. On information and belief, MSM Financial and Murphy do not have a signed written advisory agreement for each of their clients.

## IV.

## REMEDIES PURSUANT TO A.R.S. § 44-3201

**(Denial, Revocation, or Suspension of Investment Adviser or Investment Adviser Representative  
License; Restitution, Penalties, or other Affirmative Action)**

30. Respondents MSM Financial and Murphy's conduct is grounds to revoke their respective licenses with the Commission as an investment adviser and an investment adviser representative pursuant to A.R.S. § 44-3201. Specifically, revocation of Respondents' licenses would be in the public interest, and:

1 a) Respondents have engaged in dishonest or unethical practices in the securities  
2 industry, within the meaning of A.R.S. § 44-3201(A)(13), by refusing to allow or otherwise impeding  
3 the Commission from conducting an investigation or examination under the IM Act or any rule  
4 adopted thereunder, within the meaning of A.A.C. R14-6-203(1);

5 b) Respondent MSM Financial has engaged in dishonest or unethical practices in the  
6 securities industry, within the meaning of A.R.S. § 44-3201(A)(13), by entering into investment  
7 advisory contracts that were not in writing with clients initially retained after July 19, 1996, within the  
8 meaning of A.A.C. R14-6-203(14); and

9 c) Respondent MSM Financial's Form ADV filed to supplement its application for  
10 licensure as an investment adviser is incomplete, inaccurate, or misleading, within the meaning of  
11 A.R.S. § 44-3201(A)(1).

12 31. Respondents' conduct is grounds to assess restitution, penalties, and/or take appropriate  
13 affirmative action pursuant to A.R.S. § 44-3201. Specifically, Respondents have engaged in dishonest  
14 or unethical practices in the securities industry, within the meaning of A.R.S. § 44-3201(A)(13).

## 15 V.

### 16 REQUESTED RELIEF

17 The Division requests that the Commission grant the following relief:

18 1. Order the revocation or suspension of Respondents MSM Financial and Murphy's  
19 respective licenses as an investment adviser and an investment adviser representative pursuant to  
20 A.R.S. § 44-3201;

21 2. Order Respondents to pay the state of Arizona administrative penalties of up to one  
22 thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296; and

23 3. Order any other relief that the Commission deems appropriate.  
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## VI.

## HEARING OPPORTUNITY

Each respondent may request a hearing pursuant to A.R.S. § 44-3212 and A.A.C. R14-4-306.

**If a Respondent requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail [cdbuck@azcc.gov](mailto:cdbuck@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

## VII.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from

1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
2 <http://www.azcc.gov/hearing>.

3 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant  
4 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a  
5 copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
6 addressed to Paul Kitchin.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the  
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not  
10 denied shall be considered admitted.

11 When the answering respondent intends in good faith to deny only a part or a qualification  
12 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
13 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an  
15 Answer for good cause shown.

16 Dated this 19th day of May 2021.

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19 Wendy Coy  
20 Assistant Director of Securities  
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